

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

NOV 16 2023

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

COSTAR GROUP, INC.; COSTAR  
REALTY INFORMATION, INC.,

Plaintiffs-counter-  
defendants-Appellees,

v.

COMMERCIAL REAL ESTATE  
EXCHANGE, INC.,

Defendant-counter-claimant-  
Appellant.

No. 23-55662

D.C. No. 2:20-cv-08819-CBM-AS  
Central District of California,  
Los Angeles

ORDER

Before: CHRISTEN, MILLER, and H.A. THOMAS, Circuit Judges.

The motion to dismiss this appeal for lack of jurisdiction (Docket Entry No. 9) is denied without prejudice to renewing the arguments in the answering brief. *See Nat'l Indus. v. Republic Nat'l Life Ins. Co.*, 677 F.2d 1258, 1262 (9th Cir. 1982) (merits panel may consider appellate jurisdiction despite earlier denial of motion to dismiss).

Appellant has filed a notice of intent to file publicly its First Amended Counterclaims, attached as Exhibit A to the response to the motion to dismiss. *See* 9th Cir. R. 27-13(f). No other party has filed a motion to file or maintain the document under seal. Therefore, the Clerk will unseal the notice (Docket Entry No. 11-1) and file publicly the document (Docket Entry No. 11-2).

The opening brief and excerpts of record are due December 20, 2023. The answering brief is due January 19, 2024. The optional reply brief is due within 21 days after service of the answering brief.